

Order below Exh-No.05 in M.A.C.P. No.04/2016.

(Ujanavati + 5 Vs. Sudhakar and Anr)

1- This is an application/ petition under Section 140 of the Motor Vehicles Act for grant of compensation under no fault liability on account of death of one Munjahari Vishwanath Amanar.

2- Petitioners' case is that, petitioner No.1 is widow, petitioner Nos. 2 to 5 are minor children and petitioner No.6 is the mother of deceased Munjahari. On 29.10.2015, at about 12:30 p.m., Munjahari along with his cousin were travelling on a motor-cycle and proceeding towards Gangakhed. Munjahari was riding the motor-cycle in moderate speed by the left side of road. When they reached near Banpimpala Shivar on Gangakhed-Parli road, at that time one motor-cycle bearing No. MH-22/AG-5778 (here-in-after referred as offending vehicle) came in high speed and in rash and negligent manner from wrong side and gave dash to the motor cycle on which Munjahari was travelling, due to which accident occurred. In the said accident Munjahari sustained serious injuries. Therefore, immediately he was shifted initially at Civil Hospital, Gangakhed and thereafter at S.R.T.R. Hospital, Ambajogai where from he was shifted at Ashwini Accident and Neuro Care Centre, Latur, where during treatment Munjahari succumbed to injuries on 25.12.2015. After the accident p.s. Gangakhed registered crime against the driver of offending vehicle vide No.280/2015. Respondent No.1 is the owner of offending vehicle

which was insured with respondent No.2 at the relevant time of accident. Therefore, the respondents are liable to pay compensation to petitioners being legal representative of Munjahari.

3- Respondent No.1 by filing written statement and say at Exh-19 opposed the petition. This respondent admits the ownership of the offending vehicle with him which was insured with respondent No.2. The respondent submits that, the offending vehicle was not involved in the accident and said accident is not caused due to negligence of his driver. On the contrary it was caused due to sole negligence of deceased Munjahari. However, with the collusion of police, false report is lodged against the driver of offending vehicle. Hence, lastly prayed to dismiss the petition.

4- The respondent No.2 resisted the petition by filing w.s and say at Exh-18. This respondent denied the mode and manner of accident, so also involvement of offending vehicle in the accident. However, submitted that after four day delay, the petitioner in collusion with police and respondent No.1 involved the offending vehicle to grab the amount from it. Without admitting the involvement of the offending vehicle in accident, this respondent submits that the driver of offending vehicle was not holding valid and effective driving licence at the relevant time of accident and therefore, there is breach of terms and conditions of policy. He denied that the accident caused due to negligence of offending vehicle driver but submitted that the

accident caused due to negligence of deceased. On all these grounds, this respondent lastly prayed for dismissal of petition against it.

5- Heard learned counsel for parties and perused the record. To get the relief under Section 140 of Motor Vehicles Act, petitioner has placed on record documents below list (Exh-04) viz. copy of report, AA Form, spot panchanama, inquest panchanama, autopsy report, R.C. book, insurance cover note, cash memo of Ashwini Accident and Neuro care centre, Latur, etc.. Upon Perusal copy of report it appears that accident occurred on 29.10.2015 at about 12:30 p.m. near Banpimpla shivar on Gangakhed-Parli road wherein offending vehicle was involved with the allegations that the accident occurred due to rash and negligence of driver of offending vehicle. In the said accident Munjahari sustained injuries all over the body. The cash memo of Ashiwani Hospital, Latur shows that the Munjahari was indoor patient in the said hospital from the date of accident till his death i.e. till 25.12.2015. Inquest panchanama shows that Munjahari died due to injuries sustained in accident. The autopsy report shows that the cause of death of Munjahari is injury to vital part i.e. head in RTA. The respondent No.1 admitted the ownership of offending vehicle with him. Respondent No.2 admitted, so also copy of insurance cover note shows that the offending vehicle was insured with respondent No.2 covering the date of accident. Therefore, respondents cannot escape from its liability.

6- At this stage the petitioners have satisfied the requirement of Section 140 of M.V. Act. The defence of respondent cannot be considered at this stage. The respondent has to prove its defence on merit. Therefore, the application deserves accord. Hence, the following order.

O R D E R

- 1- Application is allowed.
- 2- Respondents 1 and 2 are jointly and severally liable to pay the amount of Rs.50,000/- (Rs. Fifty thousand only) to the petitioners within two weeks from the date of this order, failing which the amount shall carry interest @ 9% per annum from the date of this order till realization.
- 3- The respondents are further directed to pay the above-said amount by account payee cheque/ D.D in the name of petitioners equally.
- 4- Assistant Superintendent (C.& F) is directed to recover deficit court-fees if any, before making payment to the claimants.

(Amol D. Harne)
Member, M.A.C.T/ District Judge-1,
GANGAKHED.

Date : 22.01.2018.